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SENATE

{ REPORT
104-110

EXTENDING THE DEADLINE UNDER THE FEDERAL POWER ACT APPLICABLE TO THE CONSTRUCTION OF 2 HYDROELECTRIC PROJECTS IN NORTH CAROLINA

JULY 11 (legislative day JULY 10), 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 801]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 801) to extend the deadline under the Federal Power Act applicable to the construction of 2 hydroelectric projects in North Carolina, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 801 is to extend the deadline contained in the Federal Power Act for the commencement of construction of two FERC-licensed hydroelectric projects located in the State of North Carolina.

BACKGROUND AND PURPOSE

Section 13 of the Federal Power Act requires a licensee to commence the construction of a hydroelectric project within two years of the date of the issuance of the license. That deadline can be extended by the FERC one time for as much as two additional years. If construction has not commenced at the end of the time period, the license is terminated by the FERC. Thus, in the absence of this legislation, the FERC would terminate the license at the end of the time period authorized under the Federal Power Act for commencement of construction.

S. 801 would extend the time required to begin construction of hydroelectric projects numbered 10812 and 6879 for five consecutive two-year periods.

LEGISLATIVE HISTORY

S. 801 was introduced by Senator Helms on May 15, 1995. A hearing was held on May 18, 1995.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on June 28, 1995, by a unanimous vote with a quorum present, recommends that the Senate pass the bill as described herein. The rollcall vote on reporting the measure was 20 yeas, 0 nays, as follows:

Yeas	Nays
Mr. Murkowski	
Mr. Hatfield ¹	
Mr. Domenici	
Mr. Nickles ¹	
Mr. Craig	
Mr. Campbell	
Mr. Thomas	
Mr. Kyl	
Mr. Grams	
Mr. Jeffords	
Mr. Burns	
Mr. Johnston ¹	
Mr. Bumpers	
Mr. Ford ¹	
Mr. Bradley	
Mr. Bingaman ¹	
Mr. Akaka	
Mr. Wellstone	
Mr. Heflin	
Mr. Dorgan	

¹ Indicates vote by proxy.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 28, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 801, a bill to extend the deadlines under the Federal Power Act applicable to 2 hydroelectric licenses in North Carolina, and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources on June 28, 1995. CBO esti-

mates that enacting the bill would have no net effect on the federal budget.

The bill would extend the deadline for construction of two hydroelectric projects currently subject to licensing by the Federal Energy Regulatory Commission (FERC). This provision may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the commission charges. Hence, the bill's provisions would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill. In addition, CBO estimates that enacting the bill would have no significant impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this measure.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the bill. Therefore, there would be no impact on personal privacy.

Little, if any additional paperwork would result from the enactment of this measure.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Federal Energy Regulatory Commission setting forth Executive agency relating to this measure are set forth below:

STATEMENT BY ELIZABETH A. MOLER, CHAIR, FEDERAL ENERGY REGULATORY COMMISSION

Mr. Chairman and members of the committee thank you for the opportunity to be here today to comment on nine bills affecting 14 hydroelectric projects licensed by the Federal Energy Regulatory Commission.

Seven of the bills would extend the statutory deadline for the start of construction of twelve licensed projects. The eighth bill would extend the non-statutory deadline for completion of project construction for one licensed project. The ninth bill would partially waive annual charges assessed for one licensed project's occupancy of federal land.

I will address each subject matter in turn. Detailed information about each bill is included in an appendix to my testimony.

S. 283, S. 468, S. 547, S. 549, S. 595, S. 611, AND S. 801: EXTENDING DEADLINES TO COMMENCE PROJECT CONSTRUCTION

Section 13 of the Federal Power Act requires that construction of a licensed project be commenced within two years of issuance of the license. Section 13 authorizes the Commission to extend this deadline once, for a maximum additional two years. If project construction has not commenced by this deadline, Section 13 requires the Commission to terminate the license.

All 12 of the projects in question have received and the maximum four years for commencement of construction. S. 611 would authorize the Commission to extend one project's construction deadline by an additional three years, for a total of seven years. S. 468, S. 547, and S. 595 would authorize or require the Commission to extend the deadline for four projects by an additional six years, for a total of ten years.

S. 283 would authorize the Commission to extend the deadline for two projects by an additional seven and one-half years, for a total of a little over eleven and one-half years. S. 549 would authorize an extension of up to six years for three projects which have already been given ten years—four years under Section 13 and six years under special legislation passed in 1989—for a total of 16 years. S. 801 would authorize extensions of up to ten years for two projects, for a total of 14 years.

As a general principle, I do not support the enactment of bills authorizing or requiring construction extensions for individual projects. However, if such extensions are to be authorized, as a matter of policy I would object to granting a licensee more than ten years from the issuance date of the license to commence construction. In my view, ten years is a more than reasonable period for a licensee to determine definitively whether a project is economically viable and to sign a power purchase agreement. If a licensee cannot meet such a deadline, I believe the license should be terminated pursuant to Section 13, so that the site is once again available for whatever uses current circumstances may warrant.

I recognize that sometimes project licenses, such as those which are the subject of S. 283, are stayed by the Commission pending judicial review. However, I believe that a ten-year period in which to commence construction is sufficient to accommodate judicial review, and indeed should be sufficient for all but the most extraordinary circumstances. On the other hand, one of the projects which is the subject of S. 801 was stayed within days of its issuance while the Commission completed related proceedings, and was in essence reissued six years later. In those cir-

cumstances, I would count the ten years from the reissuance date.

I therefore recommend that S. 283, S. 549, and S. 801 be amended to authorize the Commission to extend the construction deadline until no more than ten years from issuance of the project licenses involved.

I would not support legislation to amend Section 13 of the Federal Power Act to extend the four-year statutory deadline. Holding a license without commencing construction constitutes "site banking," which in the long-held view of the Commission, as affirmed on judicial review, is contrary to the intent of the Act. Nearly all failures to commence timely project construction have been due to the lack of a power purchase contract. If the project power cannot find a market within four years, then the site should be made available for other uses.

If there are regulatory delays beyond the licensee's control, such as a protracted proceeding on the licensee's application for a required dredge and fill permit from the Corps of Engineers under Section 404 of the Clean Water Act, then the commission can issue, and has issued, an order staying the license until such matters are resolved.

Except with respect to the ten-year maximum time period to begin construction, I do not have specific objections to the proposed legislation.

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APPENDIX TO TESTIMONY OF ELIZABETH A. MOLER, CHAIR FEDERAL ENERGY REGULATORY COMMISSION

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S. 801 (SEN. HELMS)

S. 801 would authorize the Commission to extend for up to ten years (14 years after licensing) the deadline for commencement of construction of Project Nos. 6879 and 10812.

PROJECT NO. 6879

On February 27, 1985, the Commission issued a license to Southwestern Hydro-Power, Inc., to construct and operate the 4,850-kilowatt W. Kerr Scott Hydropower Project, to be located at an existing Corps dam on the Yadkin River in Wilkes County, North Carolina. On March 29, 1985, the Commission stayed the effectiveness of the license, pending a review of its issuance. On March 21, 1991, the Commission lifted the stay and established the effective date of the license as of that date, in essence re-issuing the license. Consequently, the deadline for the commencement of project construction was originally March 20, 1993. The deadline was subsequently extended to March 20, 1995. Construction was not timely commenced. An order terminating the license has not yet been issued.

On February 28, 1993, the licensee filed an application to amend the license. On March 8, 1995, the licensee filed a request for stay of the project license asking that the license be stayed until six months after the Commission act on the project amendment and an additional amendment application filed contemporaneously with the stay request. The Commission issued an order on April 19, 1995, denying the request for stay and giving 30 days notice of probable termination of the license. An order terminating the license has not yet been issued.

Construction of the project entails building a new powerhouse, a one-mile-long transmission line, and related project facilities.

PROJECT NO. 10812

On October 29, 1990, the Commission issued a license to Daniel Nelson Evans, Jr., to construct and operate the 815-kilowatt Henrietta Mills Project No. 10812, to be located at an existing privately-owned dam on the Second Broad River in Rutherford County, North Carolina. The deadline for commencement of project construction, originally October 28, 1992, was extended to October 28, 1994. Construction was not timely commenced. An order terminating the license has not yet been issued.

Construction of the project entails modifying the dam by adding two 88-foot-long siphon pipes extending over the crest of the dam, two generating units, and related project facilities.

The legislation should be amended to provide a maximum of ten years from licensing to begin construction. The new deadlines would thus be March 20, 2001, for Project No. 6879, and October 28, 2000, for Project No. 10812.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 801, as ordered reported.